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IN THE
Supreme Court of the United States

OCTOBER TERM, 1944.

ORDER OF RAILWAY CONDUCTORS OF AMERICA; H. W. FRASER
AS PRESIDENT OF THE ORDER OF RAILWAY CONDUCTORS OF
AMERICA, ET AL., *Petitioners*,

v.

THE PENNSYLVANIA RAILROAD COMPANY AND BROTHERHOOD OF
RAILROAD TRAINMEN.

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia.

BRIEF FOR PETITIONERS.

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OPINION BELOW.

The district court rendered no opinion; its judgment and order are found at R. 89. The opinion of the United States Court of Appeals for the District of Columbia is reported at 141 F. (2d) 366, and is printed in the record at R. 113-115.

JURISDICTION.

2 The judgment of the Court of Appeals was entered March 27, 1944. (R. 116). The petition for certiorari was filed August 29, 1944, and granted October 9, 1944. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended.

STATUTE INVOLVED.

The statute involved is the Railway Labor Act, as amended June 21, 1934 (c. 691, 48 Stat. 1185; 45 U. S. C. Sec. 151, *et seq.*). The pertinent provisions of the Act are set forth in the Appendix, *infra*, pp. 32-34.

STATEMENT.

In April, 1941, The Pennsylvania Railroad Company (hereinafter called Pennsylvania) served notice upon the Order of Railway Conductors of America (hereinafter called ORC), as the bargaining representative of the road conductors employed by Pennsylvania, and upon the Brotherhood of Railroad Trainmen (hereinafter called BRT), as the representative of the road brakemen, of its desire to revise the contract then governing the working conditions, rates of pay, etc., of the two crafts. That contract had been negotiated with Pennsylvania in 1927 by ORC and BRT jointly, and they agreed to negotiate jointly its revision. (R. 5-6)

Conferences between the two unions and Pennsylvania began in May, 1941, and continued until August 3, 1942, when ORC withdrew in protest against alleged attempts by Pennsylvania and BRT to deprive it of its rights as the conductors' bargaining agent. (R. 6-7) Less than two weeks after ORC's withdrawal and on August 14, 1942, Pennsylvania executed a new and separate contract with BRT. (R. 7)

On September 23, 1942, one week after its contract with Pennsylvania became effective, BRT invoked the ~~services~~ of the National Mediation Board (hereinafter called Board) to investigate an alleged representation dispute among the conductors and to certify BRT as the bargaining representative of that craft. (R. 17) On September 28, 1942, ORC advised the Board of its desire to file a resistance to the BRT invocation (R. 23), and in a letter addressed to the Board on October 28, 1942, ORC protested that a representation election should not be held among the conductors

"at this time" because Pennsylvania had been engaging in conduct prejudicial to ORC's reputation as a bargaining agent and such an election would not be free of "interference, influence and coercion by the carrier." (R. 17-18, 23-33)

The gravamen of the charges set forth in ORC's letter of protest was that, for the purpose of influencing the conductors to transfer the representation of their craft from ORC to BRT and in pursuance of a plan designed to accomplish that purpose, Pennsylvania and BRT had given wide publicity to certain circumstances and rumors which they had purposefully brought into being and which they intended would influence the conductors to believe that BRT was a more competent bargaining agent than ORC. The circumstances and rumors that Pennsylvania and BRT were charged with having created and publicized were, very briefly, BRT's success in securing a contract with Pennsylvania in two weeks' time, and Pennsylvania's refusal to negotiate and bargain with ORC; BRT's success in having certain favorable terms included in its contract with Pennsylvania, such as provisions creating work zones, and Pennsylvania's announced refusal to include similar terms in any contract with ORC; BRT's achievement in having included in its contract with Pennsylvania provisions governing the composition of the conductors' extra board and provisions creating a new craft of "assistant conductors" whose duties were to be those formerly performed by "additional conductors," and ORC's loss to BRT of the exclusive right to negotiate with Pennsylvania regarding the conductors' extra board and regarding the duties theretofore performed by "additional conductors"; and BRT's achievement in securing Pennsylvania's agreement to pay in full some 75 per cent of all BRT claims pending before the Railroad Adjustment Board. In the closing paragraph of the letter, ORC offered to present the Board with proof of its charges. (R. 17-18, 23-33)

On November 9, 1942, in response to ORC's letter of protest, the Board ruled that it had no alternative under the

Railway Labor Act but to proceed with the conduct of a representation election. (R. 33-40) The basis for its ruling was explained as follows:

"The contentions which you make regarding the carrier's influence arise out of circumstances antedating the Board's investigation of this case which was begun on November 2, 1942, circumstances in respect of which the Mediation Board possesses no jurisdiction. Our power in such matters is to insure that during the time of taking a secret ballot or in exercising other methods of ascertaining the choice of representatives, the employees shall be free from interference, influence, or coercion by the carrier. This, the Board can and will do within a prescribed area if, and when, an election is being held." (R. 38-39)

On November 27, 1942, ORC and four of its officers (the petitioners herein) filed a complaint in the District Court of the United States for the District of Columbia against BRT and Pennsylvania. (R. 1-17)¹ The allegations in this complaint elaborated upon the charges that had been set forth in ORC's letter of protest.

The complaint alleged that Pennsylvania and BRT had conspired in an unlawful plan of action designed to discredit and weaken ORC and strengthen BRT in their respective standings with the conductors and thereby to interfere with and influence the conductors in their choice of a representative (R. 14), and that Pennsylvania had agreed to this plan in order to obtain certain financial advantages (R. 16-17). It alleged that, pursuant to this plan, Pennsylvania and BRT invaded and encroached upon ORC's jurisdictional rights as representative of the conductors by including in their contract of August 14, 1942, provisions creating a new class of "assistant conductors" to do the work formerly done by "additional conductors" (in respect of whose work ORC had enjoyed the exclusive right to bargain with Pennsylvania) (R. 14-15), and provisions gov-

¹ The two counts contained in this complaint were retained without change as Counts I and II of the amended complaint.

erning the composition and control of the conductors' extra board (the operation and maintenance of which had for many years been under the bargaining jurisdiction of ORC) (R. 14-15), and that Pennsylvania caused the contract containing these provisions to be rushed to publication and widely circulated among the conductors (R. 15). The complaint alleged that in pursuance of the plan and purpose aforesaid, Pennsylvania agreed to settle the claims which had been filed with the Adjustment Board by BRT in behalf of its members, and that Pennsylvania caused copies of this settlement agreement to be widely circulated among the conductors. (R. 14-15) The complaint further alleged that Pennsylvania had engaged in dilatory tactics, had failed and refused to bargain and negotiate with ORC as the representative of the conductors, and that Pennsylvania intentionally delayed negotiations with ORC in order that BRT could cause a representation election to be held among the conductors at a time when ORC's reputation as a bargaining agent was impaired. (R. 12, 15-16)

The complaint requested the court to declare that ORC, as the conductors' representative, had the exclusive right to bargain with Pennsylvania regarding the working conditions of that craft, and that the provisions in the BRT-Pennsylvania contract relating to "assistant conductors" and to the conductors' extra board, were void. The complaint further requested the court to enjoin Pennsylvania from negotiating with BRT regarding the working conditions of the craft of conductors, and to direct Pennsylvania to negotiate with ORC regarding the working conditions of that craft. (R. 21-22)²

On December 2, 1942, six days after this complaint was filed, the Board ordered a representation election to be held among the conductors. (R. 19) The election was conducted during the two weeks December 5-19, BRT received the majority of the votes cast at the election, and on December

² The prayer for relief in this complaint was incorporated without change in the prayer for relief in the amended complaint as paragraphs (3)-(9) thereof.

27, the Board certified BRT as the duly designated representative of the craft. (R. 19) The petitioners thereupon amended their complaint by adding a third count thereto and joining the Board as a party defendant. (R. 17-20) Count III recited what had occurred in the case after BRT's filing of an invocation with the Board on September 23, 1942, and alleged that the election and certification should be set aside for either of two reasons: *First*, because the Board had failed to perform its duty under the Railway Labor Act when it refused to determine whether Pennsylvania had, as ORC charged, engaged in conduct which would interfere with and influence the conductors' choice of a representative, and *secondly*, because Pennsylvania had in fact engaged in conduct which interfered with and influenced the conductors' choice. (R. 19-20)

The amended complaint added two paragraphs to the original prayer for relief, requesting (1) that the election and certification be set aside, and (2) that the Board be enjoined from holding a further election until such time as it should determine that the conduct charged to Pennsylvania did not constitute carrier interference and influence, or, in the alternative, that the conduct charged to Pennsylvania be declared to constitute carrier interference and influence and that the Board be enjoined from holding a further election until such time as it should determine such interference and influence had ceased. (R. 20-21)

In answering this amended complaint, the Board acknowledged that it had refused to investigate or consider the charges of carrier interference and influence contained in ORC's letter of protest, it reasserted the view that it had no power or duty under the Act to investigate or consider those charges because they related to acts of carrier interference antedating the election, and it contended that the election and certification could not be set aside on the ground that it had failed to perform its statutory duty. (R. 59-64, 73-74) Upon being served with a copy of the Board's answer and on March 8, 1943, the petitioners filed a motion for summary judgment against the Board, de-

manding that the election and certification be set aside and the Board enjoined from holding a further election until such time as the Board should determine, after investigation and consideration of the conduct charged to Pennsylvania, that such conduct had ceased or would not interfere with the conductors in their choice of a representative. (R. 65-72)

The question of law which this motion posed for the district court's decision was whether the election and certification were illegal by reason of the fact the Board had conducted the election and issued the certification without first investigating or considering ORC's charges that Pennsylvania had been interfering with and influencing the conductors in their choice of a representative. The motion was argued in May, and on June 11, 1943, the district court,

" * * * being of the opinion that there [was] no genuine issue as to any material fact with respect to the relief requested under the motion for summary judgment, but being of the further opinion that the facts admitted as true and all other facts alleged in the complaint and amended complaint of the plaintiffs, [did] not establish that the plaintiffs [had] a cause of action * * * "

entered a judgment and order dismissing the motion for summary judgment, *and the complaint and amended complaint as well.* (R. 89)

An appeal from this judgment and order was noted June 14, 1943. (R. 90) Before the appeal came on for argument, however, this Court entered decisions in three cases involving the Railway Labor Act, viz., *Switchmen's Union v. Board*, 320 U. S. 297; *General Committee v. M. K. T. R. Co.*, 320 U. S. 323; *General Committee v. Sou. Pac. Co.*, 320 U. S. 338, and, in reliance upon those decisions, motions were filed to dismiss the appeal as to each of the appellees on the ground that neither the district court nor the Court of Appeals had jurisdiction over the subject matter involved. (R. 92, 95-99, 104-105)

In opposing these motions, the petitioners conceded that under this Court's decision in the *Switchmen's Union* case,

supra, the district court and the Court of Appeals may have had no jurisdiction to consider the question raised by the motion for summary judgment—the question whether the election and certification were illegal by reason of the fact the Board had conducted the election and issued the certification without first investigating or considering ORC's charges that Pennsylvania had been interfering with and influencing the conductors in their choice of a representative. Consistently with this concession, the petitioners acknowledged that the motion to dismiss the appeal as against the Board probably should be granted.

The petitioners contended that the district court and the Court of Appeals did have jurisdiction, however, to decide whether Pennsylvania in fact had interfered with and influenced the conductors in their choice of a representative, and, in the event it should decide that question in the affirmative, to vindicate and enforce the conductors' right to a free choice by setting aside the election and certification. The petitioners urged in support of this contention that the "right" guaranteed to employees by Section 2, Third, of the Act—the "right" to select representatives "without interference, influence or coercion" by the carrier—can be violated *prior* to the date of a representation election as well as by acts and conduct of the carrier "during the time" the election is being held; that the Board had ruled it has no power to enforce this right against acts of carrier interference occurring *prior* to the holding of an election; that unless the federal courts have a power to enforce this right against acts of carrier interference occurring *prior* to the holding of an election, this right would be obliterated; and that this Court in the *Switchmen's Union* case, *supra*, reaffirmed the principles laid down in *Texas & N. O. R. Co. v. Ry. Clerks*, 281 U. S. 548; and *Virginian Ry. v. Federation*, 300 U. S. 515, and acknowledged the existence of power in the federal courts to enforce a right created by Congress in instances where the lack of such power would mean a sacrifice or obliteration of the right. It was urged that the

federal courts' power to enforce the right against acts of carrier interference antedating an election necessarily is sufficiently broad to include the power to annul the election and certification if annulment is essential to the effective enforcement of the right.

On March 27, 1944, the Court of Appeals dismissed the appeal as to all parties. (141 F. (2d) 366; R. 113-115). It expressed the opinion that the Board should have investigated ORC's charges of carrier interference before calling or holding an election, but it concluded that the petitioners' appeal should be dismissed, "on the authority of the decision of the Supreme Court in *Switchmen's Union v. National Mediation Board*, 320 U.S. 297." (141 F. (2d) at 367; R. 114-115). It was the Court of Appeals' view that

"after the election had been held and the majority of the votes had been cast and counted for [BRT] and the Board had certified it as the bargaining representative, the decisions of the Supreme Court in the cases we have referred to, as well as in the *Missouri-Kansas* and *Southern Pacific* cases decided the same day, as we understand their purport, foreclose the question we have here and deprived the courts of all rights of interference." (141 F. (2d) at 367-368; R. 115)

On August 29, 1944, this Court was petitioned to issue a writ of certiorari to review the judgment of the Court of Appeals dismissing the appeal as to Pennsylvania and BRT; no review was sought of the Court of Appeals' judgment insofar as it dismissed the appeal as to the Board. The petition for certiorari was granted October 9, 1944.

QUESTION PRESENTED.

Does the district court have the power under Section 24(8) of the Judicial Code—

(a) to entertain the petitioners' suit to vindicate and enforce the conductors' right under Section 2, Third, of the Act, it being charged in the amended complaint that prior to the holding of a representation elec-

tion among the conductors Pennsylvania engaged in conduct which interfered with and influenced the conductors in their choice of a representative, and

- (b) in the event it decides the charges are true, to vindicate and enforce the conductors' right to a free choice by setting aside the election and certification of BRT as the conductors' representative?

SUMMARY OF ARGUMENT.

This Court's decision in *Switchmen's Union v. Board*, 320 U. S. 297, *General Committee v. M-K-T. R. Co.*, 320 U. S. 323, and *General Committee v. Sou. Pac. Co.*, 320 U. S. 338, do not govern the subject case and the Court of Appeals erred in dismissing the appeal on the ground that those decisions precluded the federal courts from entertaining the petitioners' suit.

A. In the *M-K-T* and *Southern Pacific* cases, *supra*, this Court decided that the district courts have no power to settle "jurisdictional disputes." Those decisions are not applicable here.

First, the petitioners' suit is based in a substantial measure upon allegations of conduct by Pennsylvania which is asserted to have violated the conductors' right to a free choice, but is not asserted to have violated ORC's jurisdiction, as bargaining agent for the conductors.

Secondly, although the petitioners' suit is based in part upon allegations of conduct by Pennsylvania which is asserted to have violated both the conductors' right to a free choice and ORC's jurisdiction as the conductors' bargaining agent, a decision whether such conduct did interfere with and influence the conductors' choice will not necessitate a determination whether it also violated ORC's jurisdiction as the conductors' bargaining agent.

Thirdly, the *M-K-T* and *Southern Pacific* decisions should not be construed to preclude the district court from defin-

ing the jurisdiction of a craft if such definition is merely incidental but necessary to the judicial enforcement of the right guaranteed by Section 2, Third, of the Act. To so construe those decisions would open a loop-hole in the prohibition against interference by the carrier with its employees' right under Section 2, Third, to a free choice in the selection of representatives. This Court's decision that the district courts have no power to resolve "jurisdictional disputes" stemmed from the fact that judicial settlement of such disputes is not essential to the enforcement of any rights created and guaranteed by the Railway Labor Act,—the fact that the lack of power in the district courts to settle such disputes will not result in the sacrifice of any of the disputants' rights under the Act. Accordingly, those decisions should not be applied in an instance where judicial definition of jurisdiction is necessary to the enforcement of the right guaranteed by Section 2, Third.

B. This Court decided in the *Switchmen's Union* case that the district courts have no power to entertain a suit to enforce the right guaranteed by Section 2, Fourth, of the Act to the "majority of any craft or class of employees" to "determine who shall be the representative of the craft or class," because Section 2, Ninth, of the Act gives the Board the exclusive power to enforce that right. The Board's enforcement power being exclusive, it followed *a fortiori* that the district court could not entertain the Switchmen's suit to enforce the right against alleged violations resulting from the Board's exercise of its functions under Section 2, Ninth.

1. The *Switchmen's Union* decision neither compels nor supports the conclusion reached by the Court of Appeals that the district court has no power to entertain the petitioners' suit to enforce the right of employees under Section 2, Third, of the Act to choose representatives "without interference, influence or coercion" by the carrier, for the obvious reason that this Court did not decide (or even

intimate) that the Board has an exclusive power to enforce Section 2, Third.

2. On the other hand, this Court's reasoning in the *Switchmen's Union* case, if followed here, leads to the conclusion that the district court does have the power to entertain the petitioners' suit and to grant the relief it seeks.

This Court concluded in the *Switchmen's Union* case that the district court could not enforce the "majority" right guaranteed by Section 2, Fourth, because Congress gave the Board an exclusive power to enforce that right. In the instant case, although Congress has given the Board a power under Section 2, Ninth, to enforce the right guaranteed by Section 2, Third, it is established by decisions of this Court and by the rulings of the Board itself that the Board's enforcement power is not exclusive. This being so, the right is judicially enforceable.

In the *Switchmen's Union* case this Court acknowledged that the district courts have the power to enforce rights created and guaranteed by the Railway Labor Act in instances where the lack of such a power would result in the sacrifice of those rights, but concluded that the district court did not have the power to entertain the *Switchmen's* suit to enforce the "majority" right under Section 2, Fourth, because the Board has adequate enforcement power to prevent the sacrifice of that right. Under this reasoning, the district court has the power to entertain the petitioners' suit to enforce the right guaranteed by Section 2, Third, against acts of carrier interference antedating the representation election held among the conductors. This is so because the Board has no power to protect the right guaranteed by Section 2, Third, from carrier interference antedating a representation election, and lack of such a power in the district court would leave that right entirely unprotected from pre-election interference and result in its sacrifice. And since the district court has the power to enforce the right for the reason that judicial enforcement is necessary to prevent the sacrifice of the right, it follows

that the district court may annul the election and certification of BRT as the conductors' representative because no other relief will prevent the sacrifice of the conductors' right to choose a representative without interference by Pennsylvania.

ARGUMENT.

Soon after this Court entered its decisions in the *Switchmen's Union*, *M-K-T*, and *Southern Pacific* cases, *supra*, motions were filed to dismiss the petitioners' appeal for lack of jurisdiction over the subject matter involved.

In opposing those motions, the petitioners conceded that under this Court's decision in the *Switchmen's Union* case, *supra*, the district court and the Court of Appeals probably have no jurisdiction to entertain the instant suit insofar as it contends that the Board, in refusing to investigate or consider ORC's charges of carrier interference, failed to perform its duty under Section 2, Ninth, of the Railway Labor Act. The petitioners make the same concession here.

The petitioners contended that the district court and the Court of Appeals do have the power to entertain the instant suit, however, insofar as it calls upon them (a) to decide whether, prior to the holding of a representation election among the conductors, Pennsylvania interfered with and influenced the conductors in their choice of a representative, and (b) if it is decided that Pennsylvania did so interfere, to vindicate and enforce the conductors' right to a free choice by setting aside the election and certification of BRT as their representative.

Citing this Court's decisions in the *Switchmen's Union*, *M-K-T* and *Southern Pacific* cases as authority for its action, the Court of Appeals dismissed the petitioners' appeal for lack of jurisdiction. (141 F. (2d) 366; R. 113-115).

The Court of Appeals Erred in Deciding that this Court's Decisions in the M-K-T, Southern Pacific and Switchmen's Union Cases Required Petitioners' Appeal to be Dismissed for Lack of Jurisdiction.

A. The M-K-T and Southern Pacific Decisions.

The *M-K-T* and *Southern Pacific* cases, *supra*, both involved suits brought by a representative of a craft of employees against the employer-carrier and the representative of another craft of employees for a judgment declaring that certain provisions in a contract between the defendants were illegal and void under the Railway Labor Act because they related to employees belonging to the craft represented by the plaintiff. Thus, in both cases the courts were asked to define the boundary between two crafts of employees.

This Court ruled in those cases that the district courts have no power to resolve such "jurisdictional disputes," two justices dissenting and one concurring only in the result. As explained by the majority, the basis for this ruling was that the history and structure of the Railway Labor Act show that Congress did not intend for "jurisdictional disputes" to be settled by the courts, but intended that such disputes should be settled by mediation, arbitration or conciliation.

The Court of Appeals identified the instant case as one involving a "jurisdictional dispute" (141 F. (2d) at 366, 367; R. 113, 114), and stated that this Court's decisions in the above cases required the petitioners' appeal to be dismissed for lack of jurisdiction (141 F. (2d) at 367; R. 115). The basis for the Court of Appeals' view that this case involves merely a "jurisdictional dispute" is not explained in its *per curiam* opinion. Apparently, however, the Court agreed with the appellees that the charges of carrier interference set forth in the amended complaint are based entirely upon alleged violations of ORC's bargaining jurisdiction as the conductors' representative, and that a decision whether Pennsylvania did interfere with the conductors' choice in

the manner charged would necessitate a determination of the scope of ORC's jurisdiction as the conductors' representative—a determination which, according to the *M-K-T* and *Southern Pacific* decisions, the federal courts have no power to make.

The petitioners do not believe the *M-K-T* and *Southern Pacific* decisions support the conclusion that the federal courts have no power to entertain the subject case.

1. The petitioners' amended complaint contains several allegations charging that Pennsylvania interfered with the conductors' choice in other ways than by violating their representative's bargaining jurisdiction.

It is alleged in the amended complaint that Pennsylvania and BRT conspired in an unlawful plan of action designed to weaken ORC and strengthen BRT in their respective standings with the conductors and thereby to interfere with and influence the conductors in their choice of a representative (R. 14), and that Pennsylvania, in pursuance of this plan and

in an effort to promote good will toward the BRT and weaken and discredit the ORC, sought to bring about a settlement of all claims filed by the BRT before the First Division of the National Railway Adjustment Board, and published and gave wide circulation to its proposed settlement. (R. 15):

that Pennsylvania

agreed to the said unlawful plan of action or program to obtain substantial financial advantage and to secure a commitment from the BRT to adjust time claims of road brakemen, pending before the First Division of the National Railway Adjustment Board, at greatly reduced amounts. (R. 16-17):

and that, in pursuance of the aforementioned plan, Pennsylvania

has engaged in dilatory tactics, has failed and refused to bargain and negotiate in good faith with ORC,

and is intentionally delaying negotiations with ORC to grant the BRT an opportunity to invoke the services of the Board under the provisions of the Railway Labor Act for a certification to represent the class or craft of road conductors and to obtain an election in such class or craft at a time when the working conditions of the conductors are in a state of uncertainty; and that the unlawful failure and refusal of the Penn RR to bargain and negotiate is embarrassing the ORC with its members." (R. 15-16)

It is plainly evident that the district court, on the trial of the instant case, would not have to determine the scope of ORC's jurisdiction as the road conductors' representative in order to decide whether Pennsylvania in fact had engaged in the conduct charged to it in the above-quoted allegations or in order to decide whether such conduct, if proved, constituted carrier interference or influence within the meaning of Section 2, Third, of the Act. Clearly, therefore, the *M-K-T* and *Southern Pacific* decisions are not dispositive of this case.

2. The petitioners' amended complaint alleges that Pennsylvania and BRT conspired in an unlawful plan of action:

"designed to embarrass, discredit, and weaken the ORC and to assist and strengthen the BRT and thereby to influence, coerce, and interfere with the craft and class of road conductors in their choice of a collective bargaining representative." (R. 14).

and that Pennsylvania, "in pursuance of said unlawful plan,"

"while purporting to conduct joint negotiations, made a private and secret agreement with the BRT to carve out of the road conductors' work a purported new class or craft of 'assistant conductors'; that, by private and secret agreement, the Penn RR also negotiated with the BRT with regard to the manning, creation, and control of a conductors' extra board; and

that such action was a clear invasion of the jurisdictional province and representative rights of the ORC as the lawful bargaining agent of the class and craft of conductors, and was done for the purpose of strengthening the BRT and weakening and embarrassing the ORC in their respective standings with the class and craft of conductors." (R. 14-15)

It is further alleged that the secret agreement between Pennsylvania and BRT to create a new craft of "assistant conductors" and to establish BRT as bargaining agent with respect to the conductors' extra board, was incorporated in the Pennsylvania-BRT contract of August 14, 1942, which Pennsylvania rushed to publication and circulation among the conductors. (R. 15) The complaint alleges that for more than twenty years prior to the time they entered into said secret agreement, Pennsylvania and BRT had recognized that ORC, as the conductors' representative, had the authority to negotiate with Pennsylvania respecting the composition and maintenance of the conductors' extra board and respecting the work which under the Pennsylvania-BRT contract of August 14, 1942, was to be performed by the "assistant conductors." (R. 41-42)

An examination of the above summarized allegations apparently persuaded the Court of Appeals to the view that, on the trial of the petitioners' suit to enforce Section 2. Third, a decision whether Pennsylvania had interfered with and influenced the conductors in their choice of a representative would necessitate a determination of the point where the exclusive jurisdiction of the craft of road conductors ends and the authority of the craft of road brakemen begins. The Court of Appeals apparently reasoned that the question whether Pennsylvania violated the conductors' right to a free choice depends upon whether the provisions in the Pennsylvania-BRT contract of August 14, 1942, pertaining to the conductors' extra board and "assistant conductors" infringed upon ORC's bargaining authority as the conductors' representative, and that under the *M-K-T*.

and *Southern Pacific* decisions there is no judicial power to make such a determination.

However, the petitioners believe it is unnecessary to determine whether Pennsylvania's action with respect to the conductors' extra board and "assistant conductors" infringed upon ORC's authority as bargaining agent for the conductors in order to decide if that action by Pennsylvania interfered with and influenced the conductors in their choice of a representative. In this suit to enforce Section 2, Third, the question is not whether Pennsylvania violated ORC's jurisdictional rights as a bargaining agent, but whether Pennsylvania violated the conductors' right under Section 2, Third, to a free choice, and it is a self-evident fact that the conduct of a carrier may violate its employees' right to a free choice without violating the bargaining jurisdiction of their representative.

Section 2, Third, provides that

Representatives, for the purposes of this Act shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives."

It is seen that a carrier is prohibited from "in any way" interfering with or influencing its employees in their "choice of representatives." The petitioners submit that, within the meaning of Section 2, Third, any act by the carrier (a) which the carrier is under no legal duty to do and (b) which in fact interferes with or influences the employees in their choice of a representative, constitutes carrier interference or influence. On the trial of this case, therefore, it must be decided that Pennsylvania's action with respect to the conductors' extra board and "assistant conductors" violated the conductors' right under Section 2, Third, if it is shown that such action did "discredit and weaken ORC and strengthen BRT in their respective standings with the craft of road conductors," or that it otherwise in-

fluenced the conductors' choice. The fact that but for the prohibition against carrier interference in Section 2, Third, Pennsylvania's action was lawful, is of no significance; it is no defense to the charge of carrier interference that Pennsylvania's action did not violate ORC's jurisdiction as the conductors' bargaining agent.

3. Even if this Court should rule that the district court would have to determine whether Pennsylvania's action with respect to the conductors' extra board and the "assistant conductors" violated ORC's jurisdiction as the conductors' representative in order to decide whether that action interfered with the conductors' choice, it does not necessarily follow that the *M-K-T* and *Southern Pacific* decisions would preclude the district court from making such a determination.

The suit herein seeks to vindicate and enforce the conductors' right under Section 2, Third, of the Act to choose a representative without interference or influence by Pennsylvania. There is no reason to believe, but every reason to doubt, that this Court intended by its decisions in the *M-K-T* and *Southern Pacific* cases to impair the right of employees to select representatives "without interference, influence or coercion" by the carrier. Those decisions will impair, if not destroy, that right, however, if they are so construed as to support the conclusion that the district court lacks the power to entertain the instant suit insofar as it charges that Pennsylvania's action with respect to the conductors' extra board and "assistant conductors" violated the conductors' right to a free choice.

Under those decisions, so construed, a carrier will be at liberty to interfere with and influence its employees' choice

³ The record does not show that BRT had been certified by the Board as the representative for employees listed on the conductors' extra board or for employees performing the work of "assistant conductors," at the time it entered into a contract with Pennsylvania regarding the work of such employees. Therefore, Pennsylvania cannot claim that it was required by law to enter into such contract.

by refusing to respect or by otherwise violating the jurisdiction of their representative. And what more effective method is there for inducing a craft of employees—a craft of road conductors, for example,—to transfer their representation from, let us say, ORC to BRT, than the method under which the carrier (a) refuses to negotiate with ORC respecting the work and pay of the road conductors, but (b) negotiates a contract with BRT which, among other things, improves the working conditions and increases the pay of a segment of the craft of road conductors?

If judicial enforcement of Section 2, Third, will require judicial definition of jurisdiction, it is necessary to reconcile the rule that the district courts have no power to resolve "jurisdictional disputes" with this Court's decision in the *Railway Clerks* case (*Texas & N. O. R. Co. v. Ry. Clerks*, 281 U. S. 548), that Section 2, Third, is judicially enforceable. Until and unless this Court decides to the contrary, the petitioners will hold to the opinion that where the definition of jurisdiction is incidental but necessary to the enforcement of Section 2, Third, the *M-K-T* and *Southern Pacific* decisions should not be applicable. The contrary conclusion will facilitate circumvention of the statutory prohibition against carrier interference, and, as Chief Justice Hughes stated in the *Railway Clerks* case, *supra* (281 U. S. at 569), "Freedom of choice in the selection of representatives . . . is the essential foundation of the statutory scheme."

The petitioners submit, moreover, that to hold the courts may define jurisdictional boundaries in the exercise of their power to enforce Section 2, Third, will not, as a matter of fact, do violence to the *M-K-T* and *Southern Pacific* decisions. In the last analysis, the reason why the courts have no power to settle "jurisdictional disputes" is because judicial resolution of such disputes is not necessary to the enforcement of any specific right under the Act, or, stated differently, because the lack of power in the courts to decide such disputes will not result in the loss by either of

the disputants of any of its rights under the Railway Labor Act. In his opinions in those cases, Mr. Justice Douglas examined each provision of the Act cited by the various litigants to support their respective contentions, and concluded that none of the litigants' rights under the Act were at stake. If, therefore, the definition of jurisdiction is an essential, preliminary step in the enforcement of one of the most important of the rights guaranteed by the Act, the right to freedom of choice, the *raison d'être* of the *M-K-T*, and *Southern Pacific* decisions is absent.

B. The Switchmen's Union Decision.

The facts involved in the *Switchmen's Union* case, *supra*, were quite simple. The Brotherhood of Railroad Trainmen invoked the services of the Board to investigate a representation dispute among the yardmen of the New York Central Railroad Company. BRT claimed that the yardmen employed on all the rail lines operated by the New York Central constituted a single craft of employees and that a majority of that craft desired to be represented by it. The Switchmen's Union protested to the Board that certain of the rail lines operated by the New York Central were separate carriers and that the yardmen on each of those particular lines constituted a separate craft of employees. The Switchmen's Union contended that each of those separate crafts should be permitted to vote for a separate representative and not be compelled to participate in a system-wide election.

Section 2, Ninth, of the Railway Labor Act provides that the Board "shall designate who may participate in the election" of representatives; and, in the exercise of that function, the Board resolved the controversy between the BRT and the Switchmen's Union in the former's favor by ruling that all lines operated by the New York Central constituted a single carrier and that it had "no discretion to split a single carrier . . . for the purpose of determining who shall be eligible to vote for a representative of a craft or

class of employees." Pursuant to this ruling a system-wide election was held and BRT, being the recipient of a majority of the votes cast, was certified by the Board as the representative of the yardmen.

The Switchmen's Union thereupon filed suit in a district court to have the "determination of the Board of the participants in the election, and the certification of the Brotherhood of Railroad Trainmen as the representative of the yardmen, cancelled." The thesis of the Switchmen's suit was that the action taken by the Board under the purported authority of Section 2, Ninth, had deprived yardmen on certain of the rail lines operated by the New York Central of the right guaranteed them by Section 2, Fourth, of the Act—the "right" of a "majority of any craft or class of employees" to "determine who shall be the representative of the craft or class."

The district court dismissed the suit and its judgment was affirmed on appeal. Both lower courts treated as the decisive issue in the case the question whether the Board had properly exercised its functions under Section 2, Ninth, i.e., whether Section 2, Ninth, gives discretion to the Board to split the crafts of a single carrier into smaller units so that the members of such units may choose representatives of employees.

On certiorari, this Court held that the district court "did not have the power to review the action of the National Mediation Board in issuing the certificate" (320 U. S. at 300), three justices dissenting. As explained in the majority opinion, the basis for this holding was that Congress, in adopting Section 2, Ninth, into the Act, delegated to the Board the exclusive power to enforce the "right" which the Switchmen's suit sought to enforce in the courts. The view that the Board's enforcement power was intended by Congress to be exclusive, followed from the majority's appraisal of the evolution and structure of the Railway Labor Act.

The Court of Appeals was of the opinion that the motions to dismiss the petitioners' appeal in the instant case for lack of jurisdiction "must be granted on the authority of the decision of the Supreme Court in *Switchmen's Union v. National Mediation Board*, 320 U. S. 297" (141 F. (2d) at 362; R. 114).

1. The petitioners do not believe the *Switchmen's Union* decision supports the conclusion that the federal courts have no jurisdiction over the subject matter of the instant case.

The problem here is whether the federal courts have the power to entertain a suit which seeks to vindicate and enforce the conductors' right under Section 2, Third, of the Act to choose a representative without interference or influence by Pennsylvania. The problem in the *Switchmen's Union* case was whether the federal courts had the power to entertain a suit which sought to vindicate and enforce the right of the "majority" of a craft of employees under section 2, Fourth, of the Act "to determine who shall be the representative of the craft."

This Court held that the district court had no jurisdiction to entertain the *Switchmen's* suit to enforce the "majority" right guaranteed by Section 2, Fourth; it did not decide that a district court has no jurisdiction to entertain a suit to enforce the right guaranteed by Section 2, Third. The basis for this Court's holding was that the Board has the exclusive power to enforce the "majority" right under Section 2, Fourth; this Court did not decide or even intimate that the Board has the exclusive power to enforce the right guaranteed by Section 2, Third. Clearly, the *Switchmen's Union* decision neither compels nor supports the conclusion reached by the Court of Appeals that the courts have no jurisdiction over the subject matter of this case.

2. On the other hand, if the tests employed by this Court to resolve the question whether the district court had the

power to entertain the Switchmen's suit are applied to resolve the problem here, the conclusion is reached that the district court does have the power to entertain the petitioners' suit.

a. As noted above, this Court decided in the *Switchmen's Union* case that the district court had no power to entertain a suit to enforce the "majority" right guaranteed by Section 2, Fourth, because Congress delegated to the Board a power to enforce that right, and, since Congressional specification of one method for the enforcement of a right normally excludes other methods, the Board's power is exclusive. Adapting that test to this case, the conclusion is reached that the district court has the power to entertain the petitioners' suit to enforce the right guaranteed by Section 2, Third, because Congress has *not* delegated to the Board an exclusive power to enforce that right.

It is true that Congress vested the Board with a power to enforce the right guaranteed by Section 2, Third, when, in 1934, it adopted the following provision into the Act as a part of Section 2, Ninth:

"In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier."

But the enforcement power which this provision delegates to the Board is not an exclusive power.

First, this Court held in the *Railway Clerks* case, *supra*, that the federal courts had the power to enforce the right guaranteed by Section 2, Third, of the Railway Labor Act of 1926; and in *Virginian Ry. v. Federation*, 300 U. S. 515, which involved the Railway Labor Act of 1926, as amended in 1934, this Court, after noting that the petitioner was not contesting that part of the district court's decree which

enjoined the petitioner from interfering with its employees' choice of representatives, stated (544):

"That contention is not open to it in view of our decision in the *Railway Clerks* case, *supra*, and of the unambiguous language of § 2, Third and Fourth, of the Act, as amended."

And again in the *Switchmen's Union* and *M-K-T* cases, this Court expressly acknowledged that the *Railway Clerks* case is authority to this day for the proposition that the right guaranteed by Section 2, Third, is judicially enforceable. (320 U. S. 297, 300; 320 U. S. 323, 327, 329) See also, *Stark v. Wickard*, 321 U. S. 288, 306-307.

Secondly, the Board itself has declared that its power under Section 2, Ninth, to enforce the right guaranteed by Section 2, Third, is neither exclusive nor complete. In its answer to the petitioners' amended complaint, the Board reasserted its earlier ruling that it has no power to enforce the right except against acts of carrier interference occurring "during the time" an election is being held, and stated that

"this Court has jurisdiction to consider the validity of these charges on the merits on evidence *de novo*" (R. 74)

It appearing that the Board's power to enforce the right guaranteed by Section 2, Third, is not exclusive, it follows under the *Switchmen's Union* decision that the district court has the power to enforce that right.

b. This Court, noting that "it is for Congress to determine how rights which it creates shall be enforced" (320 U. S. at 301), considered as decisive of the *Switchmen's Union* case the inquiry whether Congress intended that the broad grant of general jurisdiction embodied in Section 24(8) of the Judicial Code (28 U. S. C. § 41(8)) should empower the district courts to enforce the "majority" right created and guaranteed by Section 2, Fourth, of the Act.

This Court acknowledged the principle (as established by the *Railway Clerks and Virginian Railway cases, supra*) that in instances where the absence of jurisdiction of the district courts would mean a sacrifice or obliteration of a right which Congress has created, it is to be inferred that Congress intended Section 24(8) of the Judicial Code should empower the district courts to enforce the right, but declared that "Such considerations are not applicable here" (320 U. S. at 300) because the right sought to be enforced in the Switchmen's suit "is protected by § 2, Ninth, which gives the National Mediation Board the power to resolve controversies concerning it" (320 U. S. at 301).

In the instant case, the decisive inquiry is whether Congress intended that Section 24(8) of the Judicial Code should empower the district court to enforce the right which it created and guaranteed in Section 2, Third. And, under the principle which this Court recognized as controlling in such instances, it is to be inferred that Congress did intend that Section 24(8) should empower the district court to entertain the petitioners' suit to enforce the right guaranteed by Section 2, Third, against pre-election carrier interference because the lack of such power would result in the sacrifice or obliteration of that right.

That the lack of power in the district court to entertain the petitioners' suit would result in the sacrifice or obliteration of the right to freedom of choice in the selection of representatives, follows from the fact that the Board has no power to protect that right from carrier interference and influence antedating a representation election. Since

* The Board itself is authority for the statement that it has no power to protect the right from carrier interference antedating an election. The Board so ruled during the early stages of this controversy.

* The contentions which you make regarding the carrier's influence arise out of circumstances antedating the Board's investigation of this case which was begun on November 2, 1942, circumstances in respect of which the Mediation Board possesses no jurisdiction. Our power in such matters is to

the Board has no power to protect the right from acts of carrier interference which antedate a representation election, the absence of such a power in the district courts would leave the right unprotected against such pre-election interference. And it is during the period preceding an election, when the employee is making up his mind as to whom he will vote for at the election, that protection from carrier interference and influence is most needed.⁵

It may be suggested that the right would not be obliterated even if the district courts lacked the power to pro-

insure that during the time of taking a secret ballot or in exercising other methods of ascertaining the choice of representatives, the employees shall be free from interference, influence or coercion by the carrier. This, the Board can and will do within a prescribed area, if, and when, an election is being held. (R. 38-39)

And in its amended answer, the Board defended and reasserted this view:

"In answer to paragraph 44 of the complaint, these defendants deny that the said election and the certification are illegal, null and void; they deny that the Board, in not determining whether the labor practices charged to the Pennsylvania Railroad would interfere with, influence or coerce the craft or class of road conductors in their choice of a bargaining representative, was failing to perform its statutory duty;

* * * For further answer these defendants allege: That the Board determined, * * * that the instant charges did not allege carrier coercion directly affecting and occurring during the actual conduct of the election and that the Board therefore, as a matter of law, had no jurisdiction to consider the validity of these charges on the merits * * * (R. 73-74).

While the petitioners disagree with the Board's definition of its power under Section 2, Ninth, there is no denying that its definition is immune to challenge in the courts, for, as Mr. Justice Reed pointed out in his dissenting opinion, the *Switchmen's Union* decision "leaves the interpretation of the authority granted by Section 2, Ninth, finally to the Board" (326 U. S. at 311).

It has not been disputed by either of the respondents, but has been tacitly conceded by both, that Section 2, Third, may be violated by a carrier prior to the holding of a representation election.

fect it from pre-election carrier interference, because a carrier guilty of pre-election interference would be subject to the criminal penalties provided for in Section 2, Tenth. But to argue that Section 2, Tenth, will deter carriers from interfering with their employees' choice and thereby save the right from obliteration, is to ignore realities. A conviction can be secured under Section 2, Tenth, only by proving, *beyond all reasonable doubt*, that the carrier *willfully* violated its employees' right under Section 2, Third. As a practical matter, Section 2, Tenth, is no protection whatever against the more subtle forms of carrier interference and influence. Moreover, the prosecution of a carrier guilty of pre-election interference would not erase the effects of that criminal conduct and would not, therefore, insure that a free choice would be exercised at the election.⁶

It may also be suggested that even if the district courts do have the power to protect the right from acts of carrier interference antedating a representation election, that power does not permit them to grant the relief which the petitioners are seeking in this case—the annulment of the election and certification of BRT as the conductors' representative. But without such breadth, that power ordinarily would be wholly inadequate to protect the right.

Recall, for example, the alleged sequence of events in the subject case: Beginning August 3, 1942, Pennsylvania began engaging in conduct which, as Pennsylvania intended it would, influenced the craft of road conductors to believe their current representative, ORC, was a less effective bargaining agent than BRT. On September 23, 1942, BRT invoked the services of the Board to investigate a representation dispute among the road conductors. On October 28, 1942, ORC protested to the Board that an election should

⁶In *I. A. of M. v. Labor Board*, 311 U. S. 72, 82, and *Labor Board v. Link-Belt Co.*, 311 U. S. 584, 690, this Court recognized that an employer's acts may have a lasting and continuing influence upon the employees' choice of a representative.

not be held "at this time" because Pennsylvania had engaged in conduct which interfered with and influenced the conductors in their choice, and ORC offered to prove its charges. The Board on November 9, 1942, ruled that since ORC's charges related to acts of interference antedating the election, the Board had no power or duty under the Act to investigate or consider them, and could not, therefore, postpone the election. On December 3, 1942, the Board ordered an election to be held during the two weeks December 5-19. The election was held, and on December 27, 1942, the Board certified the winner, BRT, as the conductors' representative.

In these circumstances, what measures could have been taken by ORC to enforce the road conductors' right to a free choice?

ORC could have filed suit any time after August 3, 1942, when Pennsylvania first interfered, to enjoin Pennsylvania from committing any further acts of interference. However, an injunction against future interference would not have eliminated the effects of the prior interference and would not, therefore, have insured that the conductors would be able to exercise a free choice at the coming election.

It is clear that ORC could not have maintained a suit against the Board to have the election postponed, because the courts will not interfere with the Board in the exercise of its functions under Section 2, Ninth. The District Court of the United States for the District of Columbia invariably has declined to direct that a representation election be postponed, and it seems clear from *the Switchmen's Union* decision that the courts cannot dictate to the Board how it shall perform its duties.

Perhaps ORC could have had Pennsylvania prosecuted, but, as hereinabove explained, Section 2, Tenth, imposes a

⁷ It appears from its language, however, that Section 2, Tenth, will be invoked only upon application to a district attorney by the "duly designated representative." As that term is used in the Act, it refers to *certified* representatives, and ORC was never the *certified* representative of the road conductors.

difficult burden of proof upon the prosecution, and a conviction, even if obtained, would not have righted the wrong or insured that the conductors would be able to exercise a free choice at the election.

It develops, therefore, that the district Court's power to enforce the right (even when supplemented by criminal sanctions) would be wholly inadequate unless that power is sufficiently broad to permit the court to set aside the election and certification. The annulment of the election and certification would effectively enforce the right, as it would render unsuccessful Pennsylvania's attempt to induce the road conductors to transfer their representation from ORC to BRT; it would release the road conductors from a choice which was not a free choice, and it would disenable BRT to reap the fruits of Pennsylvania's illegal conduct.

It appearing that the annulment of the election and certification of BRT as the conductors' representative is the only relief that will effectively vindicate the conductors' right to a free choice, it is clear that the district court has the power to annul that election and certification. The reason why the district court has the power under Section 24(c) of the Judicial Code to entertain the petitioners' suit to enforce the right to a free choice, is because the lack of such a power would result in the obliteration of that right. This assumes that if the court has the power, it can prevent the obliteration of that right. It follows that the court has the power to annul the election and certification if annulment is necessary to prevent the obliteration of that right.

CONCLUSION.

It is submitted that the judgment of the Court of Appeals should be reversed and the cause remanded to that Court with instructions to enter a judgment reversing the judgment of the district court dismissing the amended complaint for failure to state a cause of action.

Respectfully submitted,

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APPENDIX.

The pertinent provisions of the Railway Labor Act of 1926, 45 Stat. 577, as amended in 1934, 48 Stat. 1185, 45 U. S. C., Sec. 151, *et seq.*, read as follows:

“Section 2. * * *

“Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

“Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions. *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during work.

ing hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representatives so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than \$1,000 nor

more than \$20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.